Supreme Court of the United States

OCTOBER TERM, 1892.

No. 70.

MATILDA R. BEASLEY and JOSEPH C. BEASLEY,

Appellants,

against

THE TEXAS AND PACIFIC RAILWAY COMPANY.

BRIEF ON BEHALF OF THE TEXAS AND PACIFIC RAILWAY COMPANY.

WILLIAM WIRT HOWE,
JOHN F. DILLON,
WALKER B. SPENCER,
For the Texas and Pacific Ry. Co.

C. G. Burroughs, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 79.

MATILDA R. BEASLEY and JOSEPH C. BEASLEY,
Appellants,

AGAINST

THE TEXAS AND PACIFIC RAILWAY COMPANY.

Brief on Behalf of the Texas and Pacific Railway Company.

Mrs. Matilda R. Beasley, joined and authorized by her husband, Joseph C. Beasley, brought her bill in equity in the Circuit Court of the United States for the Western District of Louisiana against The Texas and Pacific Railway Company, alleging substantially as follows:

1st. That she is the owner in her own separate right of a large plantation in the Parish of Caddo, in said Western District of Louisiana, situated on the right descending bank of Red River, in a rich alluvial district.

2d. That in the year 1899 a corporation organized under the laws of Louisiana with its domicile at Shreveport, under the name of the Texarkana, Shreveport and Natchez Railway Company, with G. W. Fouke as president, was engaged in constructing a railway from Texarkana, in the State of Texas, to the city of Shreveport, Louisiana.

3d. That the route of said railroad traversed complainants' plantation for a distance of one (1) and five-eighths (⅝) miles, and through the land of her friend, W. F. Dillon, for a distance of four and a half miles, and that the right of way through these lands was well worth more than six thousand dollars ($6,000.)

4th. That in order to secure said right of way through all of said lands, the said Texarkana, Shreveport and Natchez Railway Company entered into a contract of purchase from orator of a right of way through orator's land for the consideration of five hundred dollars ($500) and the further consideration that said railway company shall establish and build and maintain a depot and platform, and a switch and side track to be not less than fifteen hundred (1,500) feet in length at such point upon said strip of land so conveyed as might be designated by complainant; and the further consideration that the grantee or its assigns shall not build or establish or permit to be built or established any other depot along the line of said railroad within three miles north or south of the one above stipulated for, as will be seen by a duly certified copy of said act of sale, annexed and made a part of this bill, and that the said W. F. Dillon thereupon signed and executed a deed of sale of the right of way through his lands

above mentioned without other costs to said grantee than the consideration above stipulated in favor of complainant.

5th. That under said contract the said grantee built its road over said lands and established and built a depot and switch at Uni station on said plantation, and complainant spent more than eight thousand dollars for buildings and improvements in the way of building a town upon the faith that no rival depot would be built or established in less than the distance of three miles.

6th. That there is no public necessity or demand for any depot within said limits.

7th. That on the 9th day of February, 1901, the said Texarkana, Shreveport and Natchez Railway Company sold said railroad from Texarkana to Shreveport with all of its right of way and other property and franchises to the Texas and Pacific Railroad Company, a corporation organized under the Acts of Congress of the United States.

8th. That said Texas and Pacific Railroad Company purchased said railroad and right of way and franchises subject to the obligations and stipulations contained in the said act of sale from complainant, and is bound by the same not to build, operate or establish a depot on said railroad within three miles of said depot at Uni station.

9th. That in violation of said contract and obligation, the said Texas and Pacific Railroad Company is

now constructing a depot on said railroad at a point called Belcher within less than three miles—to-wit: about one and one-eighth miles from the said depot at Uni station on complainant's plantation, and unless restrained and enjoined by the order and process of this Court it will proceed to build and operate said depot in violation of said contract, and that complainant will be damaged by the destruction of the value of improvements placed upon said property and by the loss of all advantages derived from said contract, amounting to more than fifty thousand dollars; which loss and destruction of her property will be irreparable, and for which she has no adequate remedy at law, and that this suit arises under the laws of the United States within the meaning of the Act of Congress of March 3d, 1875, as amended by the Acts of Congress of March 3d, A. D. 1887, and August 13th, A. D. 1888.

Tr., pages 2, 3.

The act of sale referred to in the bill of complaint is found at pages 4 and 5.

The Texas and Pacific Railway Company appeared and filed a demurrer, and, for cause of demurrer, showed:

"That it appeareth by the plaintiff's own showing in her said bill that she is not entitled to the relief prayed for therein against this defendant for the reason that it appears from the allegations of said bill that she has a full, adequate and complete remedy at law, if any remedy she has, and this court is without jurisdiction; and, further, there being no allegation or averment in said bill that this defendant is not solvent or able to respond to any recovery she may obtain in a court of law."

Tr., p. 7.

After hearing and argument, the demurrer was sustained, the restraining order dissolved and vacated, and the complainant's bill dismissed.

Tr., p. 8.

Thereupon, the complainants took an appeal to the United States Circuit Court of Appeals for the Fifth Circuit (p. 10), and, after hearing and argument, the Appellate Court rendered the opinion found at pages 14 to 20, and made the following decree:

"This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Western District of Louisiana, and was argued by counsel:

"On consideration whereof. It is now here ordered, adjudged and decreed by this court that the decree of the said Circuit Court in this cause be, and the same is hereby, reversed, and this cause remanded to said Circuit Court with instructions to enter a decree dismissing the bill for want of jurisdiction in equity, and without prejudice to any action at law to which the complainants, as advised by counsel, may think themselves entitled.

"It is further ordered, adjudged and decreed that the appellee The Texas & Pacific Railway Company be condemned to pay the costs of this cause in this court, for which execution may be issued out of said Circuit Court."

Tr., p. 14.

Thereupon, the complainants presented a petition asking for an appeal to the Supreme Court of the United States, which was allowed by the presiding Judge of the United States Circuit Court of Appeals (p. 23).

Motion to Dismiss.

We ask leave now to present the question whether the above decree of the United States Circuit Court of

Appeals is one of those final decrees from which an appeal will lie to this Court. It will be observed that there was a decree in the Circuit Court of the United States in our favor. That decree was reversed by the Circuit Court of Appeals, and the cause remanded to the court of first instance, with instructions to enter a decree dismissing the bill for want of jurisdiction in equity and without prejudice to any action at law to which the complainants, as advised by counsel, may think themselves entitled, and we were ordered to pay the costs of the appeal to the Court of Appeals. This action by the Court of Appeals was taken in order that the decree in our favor in the court of first instance should not be considered as a bar to an action at law. The cause was sent back to the court of first instance with directions to enter a different decree and with certain new directions as to costs. We submit, therefore, that the decree of the Circuit Court of Appeals was not one of those decrees finally disposing of the case, which are by law appealable to this Court, and upon this point we submit the following authorities:

Moore vs. Robins, 18 Wall., 588.
Greene vs. Fisk, 103 U. S., 518.
Rice vs. Sanger, 144 U. S., 197.
Chicago, &c., Ry. Co. vs. Osborne, 146 U. S., 354.
Brown vs. Baxter, 146 U. S., 619.
Meagher vs. Minn., &c., Co., 145 U. S., 608, 611.
Great Western Tel. Co. vs. Burnham, 162 U. S., 339.

We apprehend that the attention of the Court may be asked at any time to the fact that a decree is not appealable and that if we are right in our contention,

the Court will dismiss the appeal. We, therefore, move that the appeal be dismissed; and we have notified the other side of this motion.

On the Merits.

In case the motion to dismiss be denied, we submit in favor of The Texas and Pacific Railway Company the same points made by us in the Court of Appeals, as follows:

I.

The Texarkana, Shreveport and Natchez Railway Company was not made a party to the bill of complaint, and it is submitted that this was a fatal defect of which the Court may take notice at almost any stage of the proceedings. The contract, which is the basis of the suit, was made by The Texarkana, Shreveport and Natchez Railway Company with the complainant, Mrs. Beasley, and The Texas and Pacific Railway Company was not a party to its celebration. The suit before the Court is really an attempt to specifically enforce a negative contract by means of an injunction. Now, we fail to understand how a negative contract can be enforced by injunction without the presence in the suit of the party with whom the complainant made the contract. It seems to us, on elementary principles, that such corporation is a necessary party to the case, and no reason is given in the bill why it has not been joined.

II.

It is further submitted that the point made in our demurrer, that the Court had no jurisdiction as a court

of equity because the complainant had a full, adequate and complete remedy at law, is a sound one and should be maintained. It is supported by the decision of this Court in the case of the Texas and Pacific Railway Company vs. Marshall, 136 U. S., 393, 405. In that case it was sought to enforce a contract concerning certain railway shops by means of an injunction prohibiting their removal, and it was held that the contract was not one to be enforced in equity but that it was more consonant to justice that the injury suffered by the City of Marshall should be compensated by a single judgment in an action at law, and that on the whole the plaintiff the City of Marshall was not entitled to any relief in a court of equity.

III.

It is further submitted that, even if the foregoing points be overruled, the objection to the plaintiff's case, as held by the Court of Appeals, based on public policy, presents an insuperable obstacle in the way of the complainant. The Texas and Pacific Railway Company, according to the averments of the bill of complaint, is operating the portion of railroad in question under franchises acquired from the Texarkana, Shreveport and Natchez Railway Company, a Louisiana company with a Louisiana charter. Under Article 284 of the Constitution of Louisiana of 1898, the question of the building and location of depots along this particular line is held by the Court of Appeals to be subject to the control of the Louisiana Railway Commission. And, in any event, we are bound, in the public interest as well as our own, to establish such stations and build and locate such depots along and

near the railroad as the public convenience and the rapid and economical transportation of goods and passengers may require. In the case at the bar the Court of Appeals points out that, under many authorities, it would be against public policy to enforce the contract sued upon in this case, as the complainant attempts to do, and the Court reaches the conclusion that the complainant at the bar can have no remedy in equity. We refer to the opinion as printed in the transcript at pages 17–20, and which is also hereto subjoined, and to the following authorities there cited:

The Texas & Pacific Ry. Co. vs. Scott, 23 C. C. A., 424, 429.

Florida, &c., R. R. Co. vs. State, 31 Fla., 509.

People vs. Chicago & Alton R. R. Co., 130 Ill., 175.

Fuller vs. Dane, 18 Pick, 472.

St. Joseph, &c., R. R. Co. vs. Ryan, 11 Kansas, 602.

Chicago R. R. Co. vs. Seeley, 45 Mo., 212.

Curry vs. Natchez, &c., R. R. Co., 61 Miss., 725.

Mobile & Ohio R. R. Co. vs. People, 132 Ill., 559.

Halladay vs. Patterson, 5 Oregon, 177.

Opinion of the Circuit Court of Appeals.

Before PARDEE, McCORMICK, and SHELBY, Circuit Judges, filed May 13, 1902 (Record pp 14–20).

PARDEE, circuit judge, delivered the opinion of the court:

As the circuit court rendered an absolute decree dismissing the bill, which would probably bar proceedings instituted at law for the recovery of damages, it is

probable that the court in hearing the demurrer allowed other causes of demurrer to be orally assigned in addition to the cause assigned upon the record. The rule permitting this is thus declared in Bates Federal Procedure vol. 1, section 204 as follows:

"A defendant is not limited to one cause of demurrer, but may assign as many causes as his counsel may deem proper, either to the whole bill or to each part of the bill demurred to; and if any one of the causes assigned be held good by the court the demurrer will be allowed. And the defendant may on the argument, at the hearing, orally assign other causes of demurrer, different or in addition to those assigned upon the record, which if valid will support the demurrer, although the causes of demurrer stated upon the record be held to be invalid."

In this court the appellee urges in support of the decree appealed from that the bill is defective because one of the original contracting parties, the Texarkana, Shreveport & Natchez Railway Company, is not made a party; that the complainant has a complete and adequate remedy at law; and, that the contract as alleged, in so far as it stipulates and restricts as to the location of depots along the line of railway, is contrary to public policy and void. As there is no averment that the Texarkana Shreveport & Natchez Railway Company is doing anything or proposes to do anything in violation of its contract with complainant and no relief is prayed against said railway company or affecting it, it does not seem to be a necessary party to the suit, and if it is a necessary party, the defect can be cured by amendment to the bill.

It is not clear that the complainant has, for the wrong alleged, a complete and adequate remedy at law. Damages are not always easily ascertained and sometimes do not and cannot adequately compensate. A remedy which prevents a threatened wrong is in its essential nature nearer adequate and complete than a remedy which permits the wrong to be done and then attempts to compensate by damages assessed by a jury. See Pom. Eq. Jur. vol. 3, section 1357.

These remarks are pertinent to the case in hand for the bill alleges only indirect and remote damages and the case presented seems to be one in which before a jury it would be very difficult to point out and prove much if any actual damage. However, in the matter of damages from the threatened wrong in this case, if

the bill is defective in not being sufficiently specific or in not alleging direct damage the complainant might perhaps amend, and before her bill should be dismissed, on that sole ground, she should be given an opportunity to amend.

The objection based on public policy presents the real difficulty in maintaining this bill. The appellee as owner and operator of the Texas Shreveport & Natchez Railway Company is a public common carrier, operating public franchises, and is under duties and obligations to the State and public. Operating in Louisiana and under a Louisiana charter, it is, by article 284 of the Louisiana constitution of 1898, subject as to the building and location of depots (and in many other matters) to the control of the Louisiana Railway Commission. Aside from this, it is bound in the public interest and in its own interest to establish such stations and build and locate such depots along and near the railroad as the convenience of the public, the transaction of business and the rapid and economical transportation of goods and passengers may require.

In Texas & Pacific Railway Company *vs.* Scott was involved the right of the railway company to abandon a depot originally located, constructed and maintained in consideration of the right of way granted, and this court said:

"It must be that such an agreement is made subject to the general exigencies of business, the public interests, and to the change, modification and growth of transportation routes, as these may affect the requirements of the railway company's business." 23 C. C. A. 424, 429.

In Florida Central &c. R. R. Co. *v.* State *ex rel.* Tavares, 31 Fla. 509, in dealing with a restrictive contract as to the location of railroad depots, the supreme court of Florida well says on principle and authority:

"We can not admit that an individual is entitled to call for the interference of a court of equity to compel a railroad company to locate unchangeably its depot at a particular spot to subserve the private advantages of such individual. Railroad companies in order to fulfill one of the ends of their creation—the promotion of the public welfare—should be left free to establish and re-establish their depots wheresoever the accommodation of the wants of the public may require. To grant the relief asked for by the complainant, we would regard as against public policy."

In People *ex rel. vs.* Chicago & Alton R. R. Co. 130 Ill. 175, the court says: "It is in recognition of the paramount duty of railway companies to establish and maintain their depots at such points and in such manner as to subserve to the public necessities and convenience, that it has been held by all the courts with very few exceptions, that contracts materially limiting their power to locate and re-locate their depots are against public policy, and therefore void." The same doctrine was announced by Ch. J. Shaw, in Fuller *vs.* Dame, 18 Pick. 472; and also in St. Jos. & D. C. R. R. Co. *vs.* Ryan 11 Kansas 602; Pacific R. R. Co. *vs.* Seeley 45 Mo. 212; Currie *vs.* Nathez, Jackson & C. R. R. Co. 61 Miss. 725. In Mobile & Ohio R. R. Co. *vs.* The People 132 Ill. 559, the court says: "The location of stations for the receipt and discharge of passengers and freight at points most desirable for the convenience of travel and business being indispensable to the efficient operation of a railroad and the enjoyment of it by the public, the railway company cannot be compelled on the one hand, to locate stations at points where the cost of maintaining them will exceed the profits resulting therefrom to the company nor allowed, on the other hand, to locate them so far apart as to practically deny to the communities on the line of the road reasonable access to its use. A railway company cannot be compelled to maintain or continue a station at a point when the welfare of the company and the community in general requires that it should be changed to some other point. A railway company cannot bind itself by contract with individuals, to locate and maintain stations at particular points or to not locate and maintain them at other points. The company must be left free to establish and re-establish its depot wherever the public welfare or wants of the public may require." The same doctrine is held in Holladay *vs.* Patterson 5 Oregon 177, in which case the court says: "A railroad company is a quasi public corporation and the public have an interest in the location of their lines of roads and depots. An agreement which tends to lead persons charged with the performance of trusts or duties for the benefit of others, to violate or betray them will not be enforced."

In Texas & Pacific Railway Company *vs.* Marshall, it is held that a contract to forever maintain a terminus, shops and offices at a particular place without regard to the business of the company and the interests

of the public is not one to be enforced in a court of equity. 136 U. S. 393.

The present bill alleges "that there is no public necessity or demand for any depot within said limits," *i. e.:* within three miles north and south of Uni station; but we take this to be largely a conclusion of the pleader and not to be taken as conclusively admitted by the demurrer. Whether or not the interest of the public or the railway company demands a depot within the said limits is a question involving facts and judgment which a court of equity under proper allegations might perhaps deal with, but which in our opinion, should be left to the determination of the officials of the railway company under the regulations of the railroad commission. It is not probable, and certainly not to be assumed on a naked allegation, that the railway company will voluntarily locate and build a depot not believed by the officials of the company to be necessary for the transaction and furtherance of the railway's business or the just and proper convenience of the public.

In Texas & Pacific Railway Company *vs.* Marshall, *supra*, a case much relied upon by both parties, there is an intimation that while equity will not grant relief in cases of this kind, there may be a remedy at law in an action for damages.

It would seem that where under a contract, which is in part contrary to public policy, a valuable consideration in the way of property has passed, that the courts should not deny all relief and thus allow one party to be enriched at the expense of another not guilty of actual turpitude; and it has been held that where under a contract absolutely void because unlawful a valuable property has been transferred, while no action based on the contract will lie to recover the property, still the right of recovery may be permitted in a proper case based on a disaffirmance of the contract because of the desire of the courts to do justice as far as possible to the party who has made payment or delivered property under a void agreement which in justice he ought to recover. See Pullman Car Co. *vs.* Central Transportation Co. 171 U. S. 138.

The real question presented in the court below and renewed in this court is whether the complainant for the matters alleged in her bill can have relief in a court of equity, and it is only incidentally involved here as to whether the complainant for the same matters can have relief in a court of law.

For the reasons given, we are of opinion that the complainant can have no remedy in equity. As to the right to a remedy elsewhere we express no opinion further than as herein outlined.

The decree appealed from is absolute as to the dismissal of the bill, and as it may be considered a bar to an action at law, it is ordered and adjudged that said decree be reversed, and the cause remanded to the circuit court with instructions to enter a decree dismissing the bill for want of jurisdiction in equity and without prejudice to any action at law to which the complainant as advised by counsel may think herself entitled.

We submit that the decree of the Circuit Court of Appeals ought to be affirmed.

WILLIAM WIRT HOWE,
JOHN F. DILLON,
WALKER B. SPENCER,
for the Texas & Pacific Ry. Co.